APPRENTICES ARE COVERED EMPLOYEES UNDER WORKERS' COMPENSATION LAWS
By Jordan Blask, Tucker Arensberg, LLC

Employers beware — don’t get tied up on nomenclature when it comes to workers’ compensation.
Pennsylvania (like most states) requires employers to provide workers’ compensation coverage for their employees.
While workers’ compensation coverage is examined on a claim-by-claim basis, the inquiry will always begin with the premise that employers are generally responsible for the injuries sustained by their PAID employees so long as the employer has control, or has the right to control, the details of the injured worker’s labor. The focus remains on the nature of the working relationship; meaning if the employer directs the scope of the employee’s work for which they are PAID, it doesn’t matter what the injured employee’s title is. Any employee who receives valuable compensation in exchange for their services will be considered a covered (Continued on page 10)

COURT RULING EXPECTED TO DRIVE UP PA COMP CLAIM COSTS
By Joyce Famakinwa

Pennsylvania will see an increase in workers’ compensation claim costs as a result of the state Supreme Court’s impairment evaluation ruling, according to experts.
In June, the Pennsylvania Supreme Court struck down the state’s impairment rating evaluation process as unconstitutional. The court ruled that the “General Assembly unconstitutionally delegated to the American Medical Association the authority to establish criteria for evaluating permanent impairment.” (Continued on page 6)

PASSION: THE NTMA THANKS PHYLLIS MILLER
BotsIQ founding organizer and dedicated volunteer steps down
By Bill Padnos, BotsIQ executive director

If you have to describe Phyllis Miller in one word, then it must be PASSION.
You can also use DEDICATED, COMMITED, SUPPORTIVE, ORGANIZED, TRAINER and LEADER.
However, I would like to focus on PASSION. According to the dictionary, PASSION is an intense, driving, or overmastering feeling or conviction. It could mean a strong liking or desire for or devotion to some (Continued on page 12)
I’m honored to have been asked to serve as the president for the NTMA’s Pittsburgh Chapter. In that capacity, my number one objective is to ensure that you are receiving the full benefit from your membership. The NTMA has much to offer and the more you engage and become involved, the more you will realize that for yourself. As many of us just returned from the Fall Conference in San Antonio, I thought I would offer some highlights and why you should be sure to get it on your calendar for 2018. There’s an old adage that, “If you’re not moving forward, you are moving backward.” Nothing could be more true than in manufacturing where changes are happening rapidly. One of the best ways for NTMA members to move forward is by attending the Fall Conference. Attendance was up 30 percent this year as increasingly more members are recognizing the value of attendance.

There were formal presentations covering hot topics such as the state of the economy, government advocacy, cyber security, additive manufacturing, and workforce development. We also learned about NTMA’s Member Only Health Insurance Program specifically designed for our manufacturing community. We were all inspired by the keynote speaker, Leif Babin, former Navy SEAL, and author of Extreme Ownership. We learned how highly refined SEAL tactics can be applied to our businesses. Beyond the formal presentations, there were opportunities to hear from industry leaders regarding culture, cutting-edge advancements in machine tool technology, Lean Six Sigma, the evolution of job shops and Top Shops. One of the most enlightening sessions was structured as industry-specific roundtables. Members raised issues they were facing in their business and listened to how other member companies overcame those challenges.

Regular attendees stress networking as one of the biggest advantages of regular attendance. There are plenty of opportunities to network and share ideas over meals, in lounge areas and during evening events. We are all facing similar challenges as manufacturers and for returning members, the conference takes on the feeling of a family.

(Continued on page 14)
DON’T GET FLEECED BY YOUR LEASE

By Joseph Weis, Esq.

As a small to medium sized manufacturer, you have probably financed/leased equipment as a form of business financing. It is also likely that since you needed to focus on your business issues, you relied on the finance company or leasing agent to do the right thing. If you choose the wrong company, that may be a very expensive mistake on your part. Some finance/leasing companies have a history of switching agreements prior to the signing - without telling the business owner.

In a recent Western Pennsylvania matter, a manufacturing business owner sought a finance/leasing company to help the manufacturing company finance a $40,000 piece of equipment. The finance company rep, Kristen, worked up the paperwork as the parties agreed on an equipment finance agreement (not a ‘lease’) in which the business made the 36 monthly payments of $1,300 (for a total of $47,000 at a 10% interest rate) and at the end of the agreement, the manufacturing company was the owner of the equipment. So far, so good.

But after Kristen provided the documents to the business owner, she was taken off the account and David was brought in to close the deal. The business owner told David that the documents looked good – but the business owner’s name was misspelled and needed corrected. David sent over corrected documents with the identical $1,300 monthly payments for 36 months prominently displayed on the first page just like the previous documents. But David also changed the agreement from an equipment finance agreement to a lease without telling the business owner. The business owner justifiably relied on the finance company and signed what appeared to be the same document with his name spelled correctly. The manufacturing company made its 36 monthly payments on time through automatic withdraws and at the end of the term, it asked for the title to the equipment. That was when the trusting business owner was told that the new agreement was actually a lease and if he wanted

(Continued on page 14)
NTMF GOLF OUTING
By Michel Conklin, NRL

Each year, NTMA members come together to enjoy a fun, yet competitive, charity golf tournament to raise funds for the Pittsburgh Chapter NTMF’s high school workforce development program, SWPA BotsIQ.

This year’s Pittsburgh Chapter NTMF Golf Outing was held on Monday, Aug. 28 at the Westmoreland County Country Club. Eighty golfers participated in the shotgun start, and fortunately had a beautiful, near-perfect day of golf. Following their 18 holes, the golfers enjoyed a delicious barbeque dinner and reception. Throughout the day, tickets were sold for the 50/50 raffle and basket raffles. The proceeds from these raffles went to SWPA BotsIQ. Thank you to all of the members who attended and supported the event.

Through the golf outing, the NTMF raised $2,190 for BotsIQ. Congratulations to our winners of the event. This year’s first place team was comprised of Jeff Astley from Astley Precision, Keith Madden from Linear Machine, John Gogets from Anstrom Sciences, and Jeff Detar from Hass Factory Outlet – Pittsburgh. The winners from our basket raffles include: Ping G Driver plus a Ping visor or hat: Dave Seagriff from Oberg Industries; Ping G Iron set 4-gap, plus a Ping visor or hat: Jeff Astley from Astley Precision; Ping TR putter, plus a Ping visor or hat: Jed Hankey from Oberg Industries; Ping Hoofer Stand Bag, plus a Ping visor or hat: Dan Pavlik from DLP EDM Services, Inc.; Four tickets to Steelers v. Tennessee and a terrible towel: Eric Noel, Durametal Products, Corp; Dinner and a Show: $100 Cultural District Gift Card and $100 Gift Certificate to Pork and Beans: Nikko Leitzel from EHD; Terrible Towel Ultimate Steeler Fan Package: Bob Benton from KJ Lesker Company; Pittsburgh Party Bag: John Ustazewski from Penn State Tool & Die Corporation; and Golf for 4 at the Westmoreland Country Club: Tim Slavish from Aerotech.

The BotsIQ program continues to grow and this year boasts the return of all of the 2016-17 participating schools and the addition of six more programs (Holy Family Institute, Sto-Rox High School, Greater Johnstown High School, Chambersburg Area Career Magnet School, YWCA, and Lincoln Jr./Sr. High School).

BotsIQ strives to get high school students interested in careers in manufacturing by engaging them in the complete manufacturing process of building a 15-pound Bot. Registered schools offer the program as an elective class or club and students choose to join their high school teams. Throughout the school year, participating students learn
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Jamie Hoegerl · Sales Manager: jamieh@petersheattreat.com
Employers can request an impairment evaluation where a physician determines the degree of an injured employee’s impairment under the Pennsylvania Workers’ Compensation Act. The provision in the state’s workers’ compensation act required physicians to apply the methodology from the American Medical Association Guides to the Evaluation of Permanent Impairment. The law had been in place since 1996.

In 2007, Mary Ann Protz sustained a work-related knee injury and began receiving temporary total disability benefits from her employer. A physician assigned Protz a 10 percent impairment rating based on the AMA guide and her employer filed a petition to change her disability status from total to partial, which would limit the duration of her workers’ compensation benefits.

Protz appealed to the Workers’ Compensation Appeal Board, arguing that the General Assembly unconstitutionally delegated to the AMA the authority to establish criteria for evaluating permanent impairment. The board rejected this argument, but the commonwealth court reversed that decision on appeal and the Supreme Court of Pennsylvania agreed that the provision was unconstitutional.

“We consider whether this mandate violates the constitutional requirement that all legislative power be vested in a General Assembly, which shall consist of a Senate and a House of Representatives,” the Pennsylvania Supreme Court said in June. “We hold that it does.”

In response to the Supreme Court decision, the Pennsylvania Compensation Rating Bureau recently filed a 6.06 percent loss cost increase.

The impairment-evaluation rating process “was very straightforward ... because of this IRE process many claims were settled long before the 104 weeks (when an injured worker reaches 104 weeks of disability pay an IRE can be requested) came up ... it was a measure that everyone knew was in the system. It was a consideration for injured workers if they hired an attorney, the attorney would also figure into this. They would make the decision about whether to settle the

(Continued on page 7)
claim and how much they would settle for based on the existence of an IRE or the possibility of one. It had a big influence on claims, said John Pendrick, Philadelphia-based, vice president of actuarial services at the Pennsylvania Compensation Rating Bureau.

“Now this (IRE process) is not there, and we believe that costs are going to rise similar to a level we saw before Act 57. We will have more claims that become permanent total claims and that is the reason behind our 6.06 percent increase,” said Mr. Pendrick.

Insurance trade organizations agree, saying costs will rise in Pennsylvania due to the impact of the Protz vs. Workers’ Compensation Appeal Board (Derry Area School District) decision.

“The ruling will likely increase costs for employers and add a level of uncertainty to the workers’ compensation claims process going forward,” said Steve Bennett, Washington, D.C.-based associate general counsel for the American Insurance Association. “We hope a legislative remedy comes quickly.”

“The Protz decision will result in a significant increase in claim costs in Pennsylvania,” said Keith Bateman, Chicago-based vice president of workers’ compensation at the Property Casualty Insurers Association of America. “The decision did not address which claims are affected by the decision. If it is applied retroactively, and the extent to which it is applied retroactively, will play a large role in its potential ultimate impact. It should be noted that the Pennsylvania Compensation Rating Bureau stated that its filing did not consider the impact of retroactive application.”

In a recent statement, the Pennsylvania Chamber of Insurance stated that the 6.06 percent loss cost increase could lead to “significant additional burdens on Pennsylvania employers.”

The bureau would withdraw the filing if the legislature were to meet soon and completely reverse the impact of the Protz decision, “but time is of the essence,” Pendrick said. “This filing was proposed to go into effect November 1 so policies are soon going to be written and quoted by insurance companies with effective dates Nov. 1 and later. Employers and insurers in the state need to know soon what the loss costs are.”
PITTSBURGH CHAPTER NTMA LEADERSHIP CHANGES HANDS:

UPDATES TO THE PITTSBURGH CHAPTER NTMA BOARD OF DIRECTORS

The Pittsburgh Chapter NTMA is pleased to welcome our new president, John Maholtz. John brings more than 20 years experience to the Pittsburgh Chapter board.

We also welcome Ed Frieze of Quality Mould, Inc. to our chapter board of directors. Ed will be serving as chapter secretary. Ed has been actively involved with NTMA apprentice training as well as a longtime volunteer with the BotsIQ program.

A special thank you to Chuck DeVentura for his service as our chapter president. Chuck will remain on the board as a general member and we look forward to his continued input and guidance.

Specifically, members are needed for the BotsIQ Executive Committee, which involves quarterly meetings and optional involvement in the spring competition.

Additionally, the Programs Committee is looking for new members. This casual committee shares ideas and plans chapter events.

For more information about getting involved, please contact Chapter Executive Ed Sikora at: office@pghntma.org.

A SPECIAL THANK YOU TO OUR OUTGOING PRESIDENT:

CHUCK DEVENTURA, KURT J. LESKER CO.

By Kevin Hartford. Alle-Kiski Industries, Pittsburgh Chapter Board Member and Past President

It is with great pleasure, but a touch of sadness, that I write this tribute to Chuck Deventura, vice president of Kurt J. Lesker’s Global Engineered Solutions Group. For the past two years, Chuck has done an outstanding job as the president of NTMA’s Pittsburgh Chapter.

Because Kurt J. Lesker is so busy, Chuck has decided to step down as our chapter president and devote his full attention to his company, although he will continue as an NTMA board member. We want to thank Chuck for all he has done as president the past two years.

As a past president and having served for eight years, I wanted to leave the office in good hands, and there were no better hands than Chuck Deventura’s. Chuck and I joined the NTMA board a year apart over a decade ago, and I was immediately impressed with his knowledge of the industry, his understanding of the need for an association like the NTMA and his shared vision for creating the next generation of manufacturers. Chuck has been an important part of our workforce development efforts having served on other ancillary boards that assist the NTMA in our Apprenticeship Program. The respect Chuck has among our board and throughout the manufacturing industry is second to none.

On a personal note, Chuck and I have worked closely together for more than a decade. He’s not only one of the best executives I’ve ever worked with but he’s also one of the best people with whom I’ve ever worked. I’m pleased and proud to call Chuck a good friend.

John Maholtz has agreed to step up and become the new president of our chapter beginning immediately. For those of you who don’t know John he is the former CEO of CMC (Cygnus) in Saxonburg. During his tenure at CMC he grew their business over threefold. John knows our industry very well. We have no doubt that John will do a fine job leading our chapter.
NTMA president, Maholtz wants to insure that members are taking full advantage of all the benefits offered by being a member of the NTMA — not only insurance offerings, and training, but also, things like networking with other members and suppliers. Maholtz and his wife of 33 years have two boys and a daughter. They love to spend time with their family and dog at their cabin located about an hour north of Pittsburgh.
APPRENTICES COVERED (Cont.)

(Continued from page 1)

So then who is an employee? Payment for services rendered is the first indicator of employee-employer relationship but there are certainly more factors to consider including: (i) the control of the manner in which the work is to be done; (ii) responsibility for the results only; (iii) terms of agreement between the parties; (iv) nature of the work or occupation; (v) the skill required for performance; (vi) whether the one employed is engaged in a distinct occupation or business; (vii) which party supplies the tools; (viii) whether payment is by the time or by the job; (ix) whether work is a part of the regular business of the employer; (x) and the right of the employer to terminate the employment at any time. The key elements above all others are whether the employer has the right to control the work and the manner in which it is performed.

All that said, the employee’s title is mostly irrelevant…full-time employee, part-time employee, intern, laborer, or apprentice. They are all the same and assuming the person is paid for his or her services to the employer then they will be covered by the employer’s workers’ compensation policy when injured within the scope of employment.

Most courts recognize an employer/employee relationship when a worker is involved in an apprentice program for part of the week and then works for a sponsoring employer for the remainder of the week. If the apprentice is being paid by the employer during the vocational training, then the likelihood of the injury being covered is higher. Said differently, if the apprentice attends class at the vocational school and performs “hands-on work” under the supervision of an instructor or the school, but related to the scope of employment, the employer-employee relationship has arisen and any injury to the apprentice during classroom hours will likely be covered under that employer’s workers’ compensation policy.

The more benefit to the employer, the greater the likelihood of covered injuries. If the injury occurs at an employer-sanctioned, off-premises activity, again, coverage is to be expected.

Tucker Arensberg’s labor and employment practice group is always happy to discuss specific employer concerns in this nuanced area of the law and welcomes any NTMA member to contact Jordan S. Blask at 412.594.5597.
BotsIQ TEAM SPOTLIGHT:  
HEMPFIELD AREA HIGH SCHOOL

TEACHER ADVISOR(s): Craig Siniawski

INDUSTRY ADVISOR(s): Composidie E.D.M. Services (Primary/ Machining)  
Product Evaluation Systems (Secondary/ Heat Treatment & Material Selection)

NUMBER OF TEAMS (THIS YEAR): 1

APPROXIMATE NUMBER OF STUDENTS PARTICIPATING IN BOTSIQ (THIS YEAR): 20

NUMBER OF YEARS PARTICIPATING IN BOTSIQ: 11

HOW HAS BOTSIQ "HELPED" YOUR SCHOOL?

• It has helped to engage students at a much deeper level in the realms of manufacturing and engineering.
• It has provided a clear pathway and a head start in the skill sets needed for students going on to post-secondary engineering education and directly into apprenticeship programs with local machining and manufacturing companies.
• It has provided insight for me as an educator as to what skills are needed in industry for the realms of manufacturing and engineering.
• It has helped me to develop strong ties to other subject area teachers that didn’t necessarily see the application of their content areas (STEM), in my curriculum.
• Helped students to make better connections across the areas of STEM.
Jeff Kelly, the CEO of the Hamill Manufacturing Company and president of the National Tooling and Machining Foundation, was invited in 2005 to attend a “BattleBots” competition in Florida. Kelly was excited to see the young participants eager to learn about all STEM-related subjects of science, technology, engineering, and math and at the same time building awareness of local manufacturing industries. He was energized to bring this program to Southwestern Pennsylvania because he saw this applied learning experience was the answer to creating a manufacturing workforce talent pipeline from the high schools to local industry. Kelly thought of only one person to spearhead this initiative, his human resources manager, Phyllis Miller.

For the past 12 years, Phyllis has dedicated her time and talent to serve as the chairperson of the Southwestern Pennsylvania BotsIQ initiative. Through her determination and leadership, she recruited local manufacturing companies, workforce development organizations and post-secondary institutions to collaborate on this project. Phyllis worked tirelessly with this volunteer committee to engage and convince five area vocational schools to participate in the first competition in 2006. This year, a record 66 local high schools and youth organizations and 1,200 students will be participating in the program.

Phyllis had the foresight to recognize that the BotsIQ program would only grow and move closer to achieving its vision: all high school students in the region consider manufacturing as a viable career option with the local manufacturing companies and post-secondary institutions serve as industry advisors to the high school teams. She has been truly committed to her goal for every high school to have at least one industry advisor to mentor the students in designing and building their bot and most importantly, to promote the pathways to a career in manufacturing. In addition, Phyllis has been a strong advocate for high school students visiting manufacturing facilities and gaining a better understanding of the industry. She also makes sure that her company is an example for others to follow by having Hamill Manufacturing Company serve as the industry advisor for two area high schools. Phyllis’ actions truly speak louder than her words.

Phyllis’ contribution has been profound: She has been instrumental in creating a workforce development talent pipeline for the entire southwestern Pennsylvania manufacturing community. More than 7,000 high school students and 300 partnering companies and organizations have participated in the BotsIQ program since 2006. BotsIQ alumni are working for local manufacturing companies and enrolled in manufacturing career-related, post-secondary programs. BotsIQ is making a difference in closing the manufacturing skills/interest gap and this would have never happened without Phyllis championing the effort.

Phyllis taught all of our committee members and volunteers how to engage manufacturing’s next generation. While she has decided that it is time to step down as the BotsIQ chairperson, she will continue to make an impact on all of us. Phyllis has instilled in all of us her PASSION for manufacturing workforce development and the importance of being a PART OF THE ACTION and not on the sideline.

GET UP, GET OUT, and GET INVOLVED in BotsIQ. The schools have started the manufacturing process of designing and building their Bots. They need manufacturing companies and its professionals to dedicate time and resources to helping them get ready for the spring competitions and learn from you about the benefits of a career in
PASSION (Cont.)

(Continued from page 12)

manufacturing. Next spring, attend or even volunteer at the BotsIQ preliminary and final competitions. The best way to show your appreciation to Phyllis is to come to the competitions, meet the amazing students and hire them to come work for you. In the end, Phyllis will tell you that who wins or loses the competition means nothing. BotsIQ success is all about manufacturing companies utilizing the program as a way to find new talent.

From all of us, Phyllis — thank you.

BotsIQ TEACHER TRAINING:
Where the student becomes the master

Before teachers can instruct their students on bot building, they need to learn the fundamentals. This happens each year at the annual teacher training. Now armed with the necessary skills, these instructors take the lessons they’ve learned back to the classrooms to prepare for spring battle.

Greg Chambers gives the safety presentation. The teachers learn from each other. Instructors learn about documentation from Autumn Maloy.

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LEASE (Cont.)

(Continued from page 3)

his equipment, in addition to the $47,000 he had already paid for the $40,000 equipment, he had to pay the fair market value of the equipment which was $30,000! In essence, the business owner was being required to pay twice for his equipment. The slight of hand trick by the finance company changed the effective interest rate from 10% to 34% on a fully secured, personally guaranteed lease.

I believe that the majority of business owners would have been taken for the same scam. Maybe the business owner skims the first draft, but he has more important things to do than to read every word of every draft of a four page lease in 8 pitch font.

The finance company sued the manufacturing company and the business owner personally because of his guaranty. The manufacturing business owner was ultimately able to take ownership of his equipment, but only after having to pay $10,000 to defend himself in an out-of-state lawsuit brought by the dishonest finance company.

How do YOU avoid a similar unlucky fate? Make it a policy to choose an amount that you and your company are ok losing in a deal and if the contract is in excess of that amount, have your lawyer spend an hour reviewing the contract – especially if you have a personal guaranty involved.

The finance company in the above true story continues to do a significant amount of business in Western Pennsylvania. And it has a history of doing a bait-and-switch and likely will continue to do so. Consider yourself warned, so don’t get fleeced with your lease!

-Joseph F. Weis, Esq. is a lawyer in Pittsburgh, PA representing small and medium sized businesses who can be reached at JWeis@CFWWS.com and 412-515-8907

CONFERENCE (Cont.)

(Continued from page 2)

reunion. If you haven’t attended a conference before, you will be made to feel very welcome with introductions to other key members at a “First Timers’ Reception.” If you’ve attended before, but not recently, you will be impressed with how the conference continues to improve year-to-year. I would strongly encourage you to get the 2018 Fall Conference on your calendars and I hope to see you there.

NEW MEMBER SPOTLIGHT

Join us in welcoming the newest members of the Pittsburgh Chapter NTMA!

REED TOOL AND DIE, INC.

CONTACT: Mr. David Reed, president
EMAIL: reedtool@xoominternet.net
PHONE: 724-547-3500
ADDRESS: 1643 Pleasant Valley Rd., Mount Pleasant, PA 15666

Reed Tool & Die, Inc. has been in the custom tooling industry offering high-speed, carbide-tipped, and solid carbide tools for over 45 years. Their quality tools and response to customer needs has helped the company thrive in an ever-changing and challenging environment.

The company maintains quality through constant employee training. Their state-certified training program in tool and die making has graduated or has currently enrolled every eligible employee at Reed Tool & Die, Inc. The company finds that individual excellence leads to recommendations and awards for supplier quality achievements.

To make the quoting process as accurate and competitive as possible, Reed Tool creates 3D designs that can be modified and approved before manufacturing begins. This ensures more consistent tooling and helps to bring clarity to the design.

Going into its third generation of family-owned operation, Reed Tool values customer relationships that are built on speed, trust and authenticity.

We’re glad to count you among our members!
many hands-on skills, like CAD designing, machining, and electrical systems; but consequentially BotsIQ students are also learning many necessary job pertinent soft-skills like project and time management, working within a team, and interviewing and resume writing.

Partnering with manufacturing companies in their communities, teams are required to tour at least one industry partner and interview at least one industry professional. Reflections and reports on their experiences are necessary components in their team’s documentation binder that is required to participate in the competition. The documentation also includes many technical, industry-relevant components such as a safety plan, bill of materials, project budget and accounting report, and a complete Engineering Set of CAD designs for their Bot.

Through the program, BotsIQ works with teachers, career counselors, parents/guardians, and manufacturers to educate the students on the opportunities that exist for them post-secondary. From short-term training and apprenticeship options, to 2- and 4-year degrees, students learn about the next step in the manufacturing career pathway that will position them to be trained with the skills needed to fill the manufacturing workforce needs across southwestern Pennsylvania.

Thank you again for all of this year’s attendees and supporters. We look forward to another great event next year. For anyone interested in learning more about the SWPA BotsIQ workforce development program, please contact Program Manager Michel Conklin (conklin@ncsquared.com).

SAVE THE DATE:
Plans are already underway for our 2018 NTMF Manufacturing Open.

AUGUST 27, 2018
WESTMORELAND COUNTRY CLUB

Registration will open in December with early bird rates!
Watch your inbox or visit:
Mark your Calendar...

The NTMA Christmas Party

All members are invited to our annual holiday party Dec. 5 at the Pittsburgh Field Club.

For more information or to RSVP, please visit:

www.PGHNTMA.ORG